

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2362

SPONSOR: Commerce, Economic Opportunities, and Consumer Services Committee and Senator Klein

SUBJECT: Florida Business Corporations Act

DATE: April 9, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Maclure	CM	Favorable/CS
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute substantially revises ch. 607, F.S., the Florida Business Corporation Act. Specifically, this committee substitute:

- Expands the number of authorized signatories for filed documents to include all directors;
- Permits a corporation to specify a time of day in addition to the date for a filing to become effective;
- Extends the time frame for correcting a filed document from 10 to 30 days;
- Permits multiple shareholders within a single household to receive a single notice from a corporation;
- Requires domestic and foreign corporations to clearly indicate their corporate status in their names;
- Provides a process for alien business organizations to withdraw their registered agents;
- Amends the preemptive rights provisions to authorize preemptive rights for treasury shares and to exclude shares issued pursuant to a court-approved plan of reorganization;
- Provides for shareholder participation at meetings through remote electronic communication;
- Clarifies derivative action provisions by allowing a shareholder to file a complaint 90 days after demand upon a corporation;
- Clarifies provisions relating to control-share acquisitions;
- Repeals an unconstitutional statute that applies Florida control-share acquisition provisions to foreign corporations;

- Rewrites statutory provisions relating to dissenters'/appraisal rights, which provide rights and procedures for minority shareholders to receive the fair value of their shares in certain types of major corporate transactions;
- Makes conforming changes relating to the execution and filing of articles of dissolution;
- Provides procedures for disposing of unknown claims against dissolved corporations;
- Streamlines the reinstatement process for administratively dissolved corporations;
- Amends provisions relating to judicial dissolution of corporations;
- Provides express rights for directors to inspect corporate records; and
- Eliminates the requirement for annual reports to include a statement of whether the corporation is liable for intangible taxes.

This committee substitute substantially amends the following sections of the Florida Statutes: 607.0120, 607.0122, 607.0123, 607.0124, 607.0141, 607.0401, 607.0505, 607.0630, 607.0701, 607.0702, 607.07401, 607.0902, 607.10025, 607.1004, 607.1006, 607.1103, 607.1104, 607.1108, 607.11101, 607.1202, 607.1301, 607.1302, 607.1320, 607.1403, 607.1406, 607.1422, 607.1430, 607.1503, 607.1504, 607.1506, 607.1622, and 607.1907. This committee substitute creates the following sections of the Florida Statutes: 607.1303, 607.1321, 607.1322, 607.1323, 607.1324, 607.1326, 607.1330, 607.1331, 607.1332, 607.1333, 607.1407, and 607.1605. This committee substitute repeals section 607.0903, Florida Statutes.

II. Present Situation:

Corporations in this state are regulated under ch. 607, F.S., the “Florida Business Corporation Act” (FBCA), which is administered by the Department of State. The FBCA was largely drafted by the Corporate Law Revision Committee of the Business Law Section of The Florida Bar.¹ The mission of the committee was to review and recommend revisions to the Florida General Corporations Act so as to modernize the law without making major substantive changes, except where necessary to conform the law to contemporary corporate practice.² The FBCA was adopted by the Legislature in 1989.³ The Business Law Section has completed another review of this state’s corporations law. The result of the review is embodied in SB 2362, the subject of this staff analysis.⁴ Many of the proposed changes to ch. 607, F.S., are based on provisions of the Model Business Corporations Act.

A corporation is defined as:

[a]n entity (usu. a business) having authority under law to act as a single person distinct from the shareholders who own it and having rights to issue stock and exist indefinitely; a group or succession of persons established in accordance with legal rules into a legal or juristic person that has legal personality distinct from the natural persons who make it up, exists indefinitely apart from them, and has the legal powers that its constitution gives it.⁵

¹ Stuart R. Cohn and Stuart D. Ames, *Florida Business Laws Annotated 2002-2003*, pp. 2-3.

² *Id.*

³ Chapter 89-154, L.O.F.

⁴ See Memorandum from Bill Wiley to the Chairman of the Senate Committee on Commerce, Economic Opportunities, and Consumer Services, dated March 19, 2003 (copy available in committee files).

⁵ Black’s Law Dictionary (7th ed. 1999).

The present situation of the law for the elements contained in SB 2362 is discussed, where applicable to the understanding of the effect of a change, in the “Effect of Proposed Changes” section of this staff analysis.

III. Effect of Proposed Changes:

The committee substitute makes changes to a wide range of provisions in ch. 607, F.S., the Florida Business Corporation Act. Some of the changes increase the number of persons authorized to sign documents filed with the Department of State. Other changes relate to controlling interests and dissenters’/appraisal rights, and provide that oppression of minority shareholders may be a ground for the judicial dissolution of a corporation.

Section 1 amends s. 607.0120, F.S., pertaining to the requirements for filing documents with the Department of State (DOS).

Present Situation: Documents filed with DOS must be executed by the chair or vice chair of the board of directors of a corporation or by a corporate officer.

Effect of Proposed Change: Any director, in addition to other corporate officers, will be authorized to execute documents filed with DOS.

Section 2 amends s. 607.0122, F.S., relating to fees for filing documents.

Present Situation: Section 607.0122, F.S., provides a list of documents that may be filed with DOS. No provision is made for an agent to file a statement of resignation from an inactive corporation that has not been administratively dissolved.

Effect of Proposed Change: An agent may file an agent’s statement of resignation from an inactive corporation. This provision will allow for more accurate record keeping by DOS.

Section 3 amends s. 607.0123, F.S., relating to the effective date of documents filed with DOS.

Present Situation: Except as otherwise provided in s. 607.0123, F.S., documents filed with DOS are effective on the date filed or the date specified in the document.

Effect of Proposed Change: Documents filed with DOS will be effective at the date and *time* of filing or at the date and *time* specified in the document. This provision will enable corporations to complete tasks in a particular order on the date its filings become effective.

Section 4 amends s. 607.0124, F.S., relating to the correction of documents filed with DOS.

Present Situation: Documents correcting filings at DOS must be filed with DOS within 10 business days of the original filing. According to DOS, the 10-day time period in which filings may be corrected does not provide a meaningful opportunity to correct documents filed with DOS.

Effect of Proposed Change: The committee substitute increases the time to correct filings at DOS from 10 business days to 30 calendar days.

Section 5 amends s. 607.0141, F.S., relating to notice from a corporation to its shareholders.

Present Situation: There is no express provision in ch. 607, F.S., authorizing a corporation to send a single notice to shareholders who share the same address.

Effect of Proposed Change: Corporations may send a single notice, with some exceptions, to shareholders who share the same address if those shareholders consent to the single notice.

Section 6 revises s. 607.0401, F.S., relating to corporate names.

Present Situation: A corporate name must include the word “‘corporation,’ ‘company,’ or ‘incorporated’ or the abbreviation ‘Corp.,’ ‘Inc.,’ or ‘Co.,’ or words or abbreviations of like import in language.” Some foreign companies use the terms “Limited” or “GMBH” in their names. Such terms do not clearly indicate to a member of the public whether the entity is a corporation.

Effect of Proposed Change: A corporation name must include a term clearly indicating its corporate status. Terms used in foreign jurisdictions to indicate corporate status in those foreign jurisdictions are no longer permitted as part of a corporate name. The committee substitute also specifies that filing a corporate name with DOS does not alone create a property right to the name.

Section 7 amends s. 607.0505, F.S., relating to registered agents.

Present Situation: There is no mechanism in statute that allows an alien business organization to withdraw its registered-agent designation.

Effect of Proposed Change: The committee substitute authorizes an alien business organization to withdraw its registered agent designation by delivering an application for certificate withdrawal to the Department of State.

Section 8 amends s. 607.0630, F.S., relating to shareholders’ preemptive rights.

Present Situation: Existing law does not expressly authorize corporate bylaws to provide shareholders with preemptive rights to a corporation’s treasury shares. Preemptive rights are a shareholder’s right of first refusal to purchase a proportionate interest in any newly issued shares.⁶ These rights are often created in corporations where maintaining particular voting power is important, such as closely held corporations with few shareholders.⁷

Effect of Proposed Change: The committee substitute authorizes corporate bylaws to provide shareholders with preemptive rights to a corporation’s treasury shares. An exception to

⁶ *Florida Business Laws Annotated*, *supra* note 1, p. 59.

⁷ *Id.*

preemptive rights to shares, however, is applied to shares issued pursuant to a court-approved reorganization plan.

Sections 9 and 10 amend ss. 607.0701 and 607.0702, F.S., relating to annual and special meetings.

Present Situation: There are no provisions of ch. 607, F.S., that expressly authorize shareholders to participate and vote in shareholder meetings by electronic means.

Effect of Proposed Change: The committee substitute authorizes corporations to conduct meetings by means of remote electronic communication if authorized by a corporation's board of directors. A member who attends a meeting via remote communication must be authorized to participate and vote in such meetings.

Section 11 amends s. 607.07401, F.S., relating to shareholders' derivative actions.

Present Situation: "A derivative action is a suit brought by a shareholder, on behalf of the corporation, for corporate recovery of damages or equitable relief stemming from allegedly unlawful or improper conduct by directors, officers, or other control persons."⁸ Under existing law, a shareholder must make a demand for action by the board of directors before filing a derivative action. There is no express requirement in the law providing a certain amount of time to allow a corporation to take corrective action before a shareholder may file a derivative action.

Effect of Proposed Change: The board of directors of a corporation must be provided with at least 90 days to take action on a demand before a shareholder is permitted to file a derivative action. Derivative actions may be filed: 90 days after a demand for corrective action; when a demand is rejected by the corporation; or when irreparable injury to the corporation would result from waiting the full 90 days.

Section 12 amends s. 607.0902, F.S., relating to control-share acquisitions.

Present Situation: Shares acquired by a person that would otherwise amount to a controlling interest do not have voting rights unless voting rights are authorized by the other shareholders of the corporation. A vote that provides voting rights to shares that constitute a controlling interest may cause the accrual of a shareholder's right to assert his or her dissenter's rights and demand payment for his or her shares.

Effect of Proposed Change: An authorization to grant voting rights to shares that would constitute a controlling interest no longer authorizes a minority shareholder to assert his or her dissenter's rights to demand payment for his or her shares of the corporation. Shares acquired by a person that would otherwise amount to a controlling interest if those shares were authorized to have voting rights, regain their voting rights when transferred in a non-control share acquisition.

⁸ *Id.* at p. 85.

Section 13 amends s. 607.10025, F.S., relating to a division or combination of shares, by making technical changes.

Present Situation: Section 607.10025, F.S., does not specify how a certificate of amendment should be executed when it is filed with DOS. However, s. 607.0120, F.S., specifies that documents filed with DOS must be executed by certain authorized representatives of a corporation.

Effect of Proposed Change: Section 607.10025, F.S., is amended to replace the term “certificate” with “articles,” with no substantive change in meaning of the statute. Section 607.10025, F.S., is also amended to expressly state that articles of amendment must be executed in accordance with s. 607.0120, F.S.

Section 14 amends s. 607.1004, F.S., relating to voting on amendments by classes of shares.

Present Situation: The holders of the outstanding shares of a class of stock are entitled to vote on an amendment to the articles of incorporation when the amendment would affect the shares of the class.

Effect of Proposed Change: The holders of a class of stock are no longer authorized to vote on amendments to the articles of incorporation that increase or decrease the aggregate number of authorized shares of the class or when an amendment would create a new class of shares having rights or preferences with respect to distributions or dissolution that are substantially equal to the shares of the class. When holders of two or more classes of stock would be affected in the same or substantially similar way by a proposed amendment to the articles of incorporation, those shareholders must vote together in a single voting group, unless otherwise provided in the articles of incorporation.

Effect of Proposed Change: The committee substitute makes technical changes. Shareholders holding shares of certain classes of stock are permitted to vote on proposed amendments to the articles of incorporation when those proposed amendments may be prejudicial to the class.

Section 15 amends s. 607.1006, F.S., relating to the execution of articles of amendment.

Present Situation: Section 607.1006, F.S., does not expressly state how articles of amendment filed with DOS must be executed. Section 607.0120, F.S., however, does describe how all documents filed with DOS should be executed.

Effect of Proposed Change: Section 607.1006, F.S., is amended to expressly provide that articles of amendment filed with DOS must be filed in accordance with s. 607.0120, F.S.

Section 16 amends s. 607.1103, F.S., relating to minority shareholder rights when the majority shareholders vote to merge the corporation with another business.

Present Situation: When majority shareholders vote to merge the corporation with another business, minority shareholders may assert their dissenters’ rights, enabling them to demand payment from the corporation of the fair value of their shares.

Effect of Proposed Change: The committee substitute replaces the term “rights of dissenting shareholders” with “appraisal rights” for conformity with other changes provided under the committee substitute. Both appraisal rights and dissenters’ rights refer to the right to demand payment of the fair value of the shares held by a shareholder under certain circumstances.

Section 17 amends s. 607.1104, F.S., relating to the merger of a subsidiary corporation.

Present Situation: When a parent corporation owning at least 80 percent of the outstanding shares of a subsidiary corporation chooses to merge the subsidiary into the parent corporation, the minority shareholders of the subsidiary may be authorized to assert dissenters’ rights and demand payment of the fair value of their shares.

Effect of Proposed Change: The committee substitute replaces the term “rights of dissenting shareholders” with “appraisal rights” for conformity with other changes provided under the committee substitute. Both appraisal rights and dissenters’ rights refer to the right to demand payment of the fair value of the shares held by a shareholder under certain circumstances.

Section 18 amends. 607.1108, F.S., relating to merger of a domestic corporation and another business entity.

Present Situation: Dissenters’ rights refer to the right of a minority shareholder of a closely held corporation to demand payment for his or her shares. Dissenters’ rights are described in detail in ss. 607.1301 and 607.1320, F.S.

Effect of Proposed Change: Section 607.1108(6), F.S., is amended to conform a cross-reference with other provisions of the committee substitute replacing the term “dissenters’ rights” with “appraisal rights” and modifying procedures to assert such rights.

Section 19 amends s. 607.11101, F.S., relating to the authorization to assert dissenters’/appraisal rights when a corporation merges with another business entity.

Present Situation: When a corporation merges with another business entity, minority shareholders of a closely held corporation may be authorized to assert their dissenters’ rights to demand payment for their shares.

Effect of Proposed Change: Changes are made to s. 607.11101, F.S., to conform with other provisions of the committee substitute replacing the term “dissenters’ rights” with “appraisal rights” and modifying procedures to assert such rights.

Section 20 amends s. 607.1202, F.S., relating to the authorization for a minority shareholder to assert dissenters’ rights when a closely held corporation sells assets other than in the regular course of business.

Present Situation: When a closely held corporation sells assets other than in the regular course of its business, a minority shareholder may be authorized to assert his or her dissenters’ rights to demand payment for his or her shares.

Effect of Proposed Change: The committee substitute amends s. 607.1202, F.S., to conform with other provisions of the committee substitute replacing the term “dissenters’ rights” with “appraisal rights” and modifying procedures to assert such rights.

Section 21 substantially rewords s. 607.1301, F.S., which provides definitions for provisions of ch. 607, F.S., relating to dissenters’ rights.

Present Situation: Section 607.1301, F.S., provides definitions for “corporation,” “fair value,” and “shareholders’ authorization date” for application to provisions of ch. 607, F.S., relating to dissenters’ rights to demand payment for their shares. It is unclear whether the definition of “fair value” of minority shares permits the value of minority shares to be discounted because of a lack of liquidity or other market factors.⁹

Effect of Proposed Change: The committee substitute provides definitions of “affiliate,” “beneficial shareholder,” “interest,” “preferred shares,” “record shareholder,” “senior executive,” and “shareholder.” The committee substitute also modifies the definition of “fair value.” The new definition provides that customary and current valuation concepts are to be used and that there should be no discount for lack of marketability or the minority status of the shares except in limited instances. Also, the definition of “corporation” is modified, and the definition of “shareholders’ authorization date” is eliminated.

Section 22 substantially rewords s. 607.1302, F.S., which specifies the circumstances under which a shareholder is authorized to assert dissenters’ rights.

Present Situation: Section 607.1302, F.S., authorizes shareholders to dissent from and receive payment of the fair value of the shareholders’ shares under certain enumerated circumstances. These circumstances include: consummation of a plan of merger; the approval of a control share acquisition; consummation of a plan of share exchange; adverse amendments to the articles of incorporation that adversely affect the shareholder; or other circumstances authorized by the articles of incorporation. The right to receive fair value for shares from the corporation is not applicable for some corporate actions when the shares are listed on a national securities exchange or held by at least 2,000 record shareholders.

Effect of Proposed Change: The reworded s. 607.1302, F.S., adds greater specificity to the circumstances under which a shareholder may have his or her shares appraised and redeemed by a corporation. The committee substitute also modifies the exclusion from the right of a shareholder to receive fair value for shares when the shares are listed on a national securities exchange, by narrowing the right in three important respects:

- Section 607.1302(2)(a), F.S., adds a \$10 million minimum threshold for total market value with regard to the exclusion of appraisal rights.
- Section 607.1302(2)(c), F.S., provides that the public market exclusion of appraisal rights does not apply to transactions in which the shareholders are receiving consideration other than cash for their shares. Thus, shareholders will be

⁹ *Id.* at p. 154.

entitled to appraisal rights rather than being forced to sell their shares on the market if they desire to have the cash fair value of their shares.

- Section 607.1302(2)(d), F.S., provides that the public market exclusion of appraisal rights does not apply to affiliate transactions, that is, transactions in which controlling shareholders or management are parties on the other side of the proposed corporate action.

The committee substitute provides for one addition and two reductions of appraisal rights. Section 607.1302(1)(d), F.S., provides an additional appraisal right when shareholders are asked to vote on reverse stock splits that will result in the corporation re-purchasing fractional shares created by the reverse split. According to Scott Austin, a representative of the Business Law Section of the Florida Bar, reverse stock splits are sometimes a technique for squeezing out unwanted minority shareholders. Thus, an appraisal right was added in order to protect the valuation of the shares.

The committee substitute also provides for two reductions in appraisal rights, both of which are consistent with the Model Business Corporation Act and laws in other states, which are the elimination of appraisal rights in control share acquisition votes and the elimination of appraisal rights to certain amendments to articles of incorporation.

Lastly, section 22 of the committee substitute provides that amendments to articles of incorporation that limit or eliminate appraisal rights are not effective until one year after adoption.

Section 23 creates s. 607.1303, F.S., providing for the assertion of rights by nominees and beneficial owners.

Present Situation: There are no express provisions of statute authorizing a record owner of a stock to assert dissenters' rights or appraisal rights for a beneficial owner.

Effect of Proposed Change: A record shareholder holding shares for the benefit of another may assert appraisal rights only with respect to a whole series or class of shares held by the record owner. Beneficial owners of shares may assert appraisal rights only with respect to a whole series or class of shares held by the beneficial owner.

Section 24 substantially rewords s. 607.1320, F.S., relating to the procedures to exercise dissenters' rights.

Present Situation: Shareholders must be provided with a copy of ss. 607.1301, 607.1302, and 607.1320, F.S., providing notice of dissenters' rights when a corporate action or proposed corporate action creates dissenters' rights. Shareholders must assert dissenters' rights within 20 days after receiving notice of the opportunity to assert the rights. Within 90 days of the date that a shareholder accrues the right to assert dissenters' rights, the corporation must provide the shareholder with a written offer for the fair value of the shares. A shareholder may seek judicial determination of the value of the shares if the corporation fails to make an offer or the offer made by the corporation is rejected. The costs of a judicial proceeding are assessed against the corporation. However, the court with its equitable powers may assess a shareholder's costs

against the shareholder if the action by the shareholder was arbitrary, vexatious, or not in good faith.

Effect of Proposed Change: Section 607.1320, F.S., is modified, segmented into its component parts, and codified in ss. 607.1320-607.1332, F.S., as provided in sections 24-32 of this committee substitute. Section 24 of the committee substitute requires that an appraisal form be sent to shareholders when the right to assert appraisal rights accrues, essentially modifying s. 607.1320(1), F.S.

Section 25 creates s. 607.1321, F.S., relating to a notice of intent to demand payment.

Present Situation: Procedures for a minority shareholder to provide notice to a corporation that the shareholder may assert his or her dissenters' rights are codified in s. 607.1320(3), F.S.

Effect of Proposed Change: The committee substitute requires shareholders to deliver a notice of intent to demand payment for their shares before certain votes are taken or within 20 days of receiving notice that the shareholders have the right to assert appraisal rights. A shareholder may not vote on a corporate action if the approval of the corporate action would cause the shareholder to assert his or her appraisal rights.

Section 26 creates s. 607.1322, F.S., relating to appraisal notice and form.

The committee substitute specifies criteria for the appraisal notice and form that must be sent to a shareholder when the right to assert appraisal rights accrues. The appraisal notice and form must provide for the shareholder to state:

- The shareholder's name and address.
- The number, classes, and series of shares as to which the shareholder asserts appraisal rights.
- That the shareholder did not vote for the transaction causing the right to assert appraisal rights to accrue.
- Whether the shareholder accepts the corporation's offer for fair value of the shares.
- The shareholder's estimated fair value of the shares.

The corporation must also provide a shareholder who may have the right to demand payment for shares: a copy of applicable laws; financial statements; and a timetable under which the shareholder must assert his or her rights.

Section 27 creates s. 607.1323, F.S., to provide that shareholders must return their shares of the corporation along with their appraisal forms in order to receive payment for their shares.

Section 28 creates s. 607.1324, F.S., to provide that shareholders who accept a corporation's offer for their shares shall be paid within 90 days after the corporation receives notice of the acceptance of the corporation's estimate of the fair value of the shares.

Section 29 creates s. 607.1326, F.S., to provide that a shareholder who fails to timely provide a corporation with the shareholder's estimate of the value of his or her shares is only entitled to the amount offered by the corporation.

Section 30 creates s. 607.1330, F.S., which authorizes a corporation to initiate a court proceeding within 60 days of receiving a shareholder's demand for payment that remains unsettled. If the corporation does not timely commence the action, then it must pay the shareholder the amount of his or her demand. The corporation must make parties to the case all shareholders with whom it is unable to settle demands for payment. The court is authorized to hire an appraiser to aid its determination of fair value.

Section 31 creates s. 607.1331, F.S., which is similar to existing s. 607.1320(9), F.S. The new section provides that costs for the judicial determination of fair value are assessed against the corporation. However, the corporation's costs in addition to a shareholder's costs may be assessed against a shareholder who acted arbitrarily, vexatiously, or not in good faith by rejecting the corporation's estimate of fair value.

Section 32 creates s. 607.1332, F.S., the provisions of which are nearly identical to existing s. 607.1320(10), F.S. The section provides that shares acquired by a corporation by paying the fair value of those shares to a shareholder are held by the corporation as authorized but unissued shares.

Section 33 creates s. 607.1333, F.S., to provide that a shareholder asserting appraisal rights may not receive payment if, after payment for the shares, the corporation would be insolvent or unable to pay debts. In such instances, a shareholder may withdraw the demand for payment or retain his or her right to payment.

Section 34 amends provisions of s. 607.1403, F.S., relating to filing articles of dissolution.

Present Situation: All documents, including articles of dissolution, filed with DOS must be executed in accordance with s. 607.0120, F.S.

Effect of Proposed Change: By virtue of section 1 of the committee substitute, articles of dissolution may be executed by a member of a corporation's board of directors. This committee substitute conforms s. 607.1403, F.S., with changes made in section 1.

Section 35 amends s. 607.1406, F.S., relating to the disposition of claims against a dissolved corporation.

Present Situation: Procedures exist in s. 607.1406, F.S., to dispose of known claims against a dissolved corporation.

Effect of Proposed Change: The word "known" is inserted in s. 607.1406, F.S., to distinguish the process of disposing of known claims from the process of disposing of unknown claims, which is created by section 36 of the committee substitute.

Section 36 creates s. 607.1407, F.S., providing procedures for a dissolved corporation to dispose of unknown claims against it.

Present Situation: There is no provision under existing law authorizing a dissolved corporation to dispose of unknown claims.

Effect of Proposed Change: The committee substitute provides for a corporation in the process of dissolution to file a form with the Department of State advising unknown claimants of their rights and the procedure to make a claim. Creditors and other claimants will have access to the forms through an online database and will thus be advised regarding their rights against the corporation or the shareholders to whom assets have been distributed. This section provides for a 4-year statute of limitation regarding the filing of unknown claims, in contrast to the 3-year period provided in s. 607.1406, F.S., for known claims. The period is extended by one year because of the uncertain and contingent nature of unknown claims.

Section 37 amends s. 607.1422, F.S., to simplify procedures for the reinstatement of an administratively dissolved corporation.

Present Situation: A corporation may be administratively dissolved by DOS for: failing to file an annual report; failing to pay fees to DOS; failing to have a registered agent; or failing to notify DOS that its registered agent or registered office has changed. An administratively dissolved corporation may be reinstated by filing an application with DOS that: states the name of the corporation and the effective date of its administrative dissolution; states that the ground or grounds for dissolution either did not or currently do not exist; states that the corporation's name complies with s. 607.0401, F.S.; and states that all fees owed to DOS have been paid. Alternatively, an administratively dissolved corporation may be reinstated by filing a current annual report signed by the registered agent and an officer or director which contains the aforementioned information.

Effect of Proposed Change: Under the committee substitute, an administratively dissolved corporation may be reinstated by filing a uniform business report and paying all fees owed to DOS.

Section 38 amends s. 607.1430, F.S., to provide for judicial dissolution of corporations that engage in oppressive conduct.

Present Situation: Under s. 607.1430, F.S., the following are grounds for judicial dissolution of a corporation: the directors are deadlocked in the management of corporate affairs; the shareholders are deadlocked; corporate assets are being misapplied; or the directors are acting in a fraudulent manner.

Effect of Proposed Change: Minority shareholders will have an additional basis for seeking judicial dissolution or other equitable remedy in the event of abusive actions by controlling shareholders or directors. The addition of the term "oppressive" in s. 607.1430(3)(b), F.S., gives minority shareholders a basis for seeking judicial relief in freeze-out situations that are contrary to equitable principles. Approximately 40 states include such a provision in their statutes, which is also a Model Business Corporation Act provision.

A corporation can elect not to be subject to the oppression provision of s. 607.1430, F.S. The election to opt-out can be accomplished only by unanimous approval of the incorporators or, if there are shareholders, unanimous approval by the shareholders. Opting-out of the oppression provision would apply only to shareholder rights under s. 607.1430, F.S., and not to any other rights that shareholders might have under implied contract or fiduciary principles as a result of actions taken against them. In addition to the opt-out provision, the effective date of the amendment is delayed for current corporations. Because existing corporations have been formed under existing standards that do not include the statutory “oppression” provision, s. 607.1430(7), F.S., provides that the amendment shall not apply to existing corporations until one year from the effective date of the amendments, thus giving existing corporations time to consider whether to adopt measures to eliminate the “oppression” standard pursuant to s. 607.1430(6), F.S.

Section 39 amends s. 607.1503, F.S., to conform the requirements for names of foreign corporations that transact business in this state with the requirements of s. 607.0401, F.S. A foreign corporation must clearly indicate in its name that it is a corporation.

Section 40 amends s. 607.1504, F.S., to increase the time for a foreign corporation to apply for an amended certificate of authority from 30 to 90 days after it changes its corporate name, the period of its duration, or jurisdiction of incorporation. The application to amend the certificate of authority must be accompanied by evidence authenticated by an official from the place of incorporation that the change prompting the amendment to the certificate of authority was also made in the place of incorporation.

Section 41 amends s. 607.1506, F.S., to conform to the requirements for names of domestic corporations as described in section 6 of the committee substitute. When a foreign corporation’s name is unavailable for use in this state, the board of directors of the foreign corporation is no longer required to adopt an alternate name by resolution to use that name in this state. If the corporation’s preferred name, however, becomes available, the foreign corporation’s board of directors must change the name by resolution, an executed copy of which must be filed with DOS.

Section 42 creates s. 607.1605, F.S., to authorize a director to receive access to corporate records related to his duties as a director. Under existing Florida law, a director has no express right to review a corporation’s records.

Section 43 amends s. 607.1622, F.S., to delete a requirement that corporations specify in their annual reports filed with DOS whether they have intangible tax liability.

Section 44 amends s. 607.1907, F.S., by inserting a comma to correct a typographical error in existing law.

Section 45 repeals s. 607.0903, F.S., which was held unconstitutional in *Grand Metropolitan P.L.C. v. Butterworth*, Civ.A. No. 88-40317WS, slip op. at 15 (N.D. Fla. Nov. 28, 1988).¹⁰ Section 607.0903, F.S., purports to impose restrictions on the internal governance structures of corporations domiciled elsewhere.

¹⁰ *Id.* at p. 126.

Section 46 provides that the committee substitute will take effect on October 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The rights of minority shareholders may be strengthened by clarifying the ability of minority shareholders to demand payment for shares. Minority shareholders may seek to dissolve a closely held corporation in which the directors or those in control act in an oppressive manner.

The process of filing corporate documents with the Department of State will be streamlined.

C. Government Sector Impact:

The filing processes of the Department of State will be streamlined.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.